

REMARKS/ARGUMENTS

Applicant has cancelled original claims 1-30 without prejudice. New claims 31-46 are pending in the application.

CLAIM REJECTIONS:

35 USC § 102(e)

Claims 1-5, 7-11, 13-17, 19-23 and 25-30

The Examiner has rejected claims 1-5, 7-11, 13-17, 19-23 and 25-30 under 35 USC § 102(e) as being anticipated by U.S. Pat. No. 6,415,031 to Colligan et al. ("Colligan"). Although applicant disagrees with the Examiner's rejection, in the interests of furthering prosecution of this application applicant has cancelled claims 1-5, 7-11, 13-17, 19-23 and 25-30 without prejudice.

35 USC § 103(a)

Claims 6, 12, 18 and 24

The Examiner has rejected claims 6, 12, 18 and 24 under 35 USC § 103(a) as being unpatentable over Colligan. Applicant respectfully traverses this rejection. While applicant has cancelled claims 6, 12, 18 and 24, applicant has done so without prejudice.

The Examiner states that, although Colligan "does not disclose the Nth packet being between consecutive data packets having a sequence header code," it would, nonetheless, have been obvious to modify Colligan to "restart the counter of Fig. 14E when a new header code is detected in the system of Colligan" because then "the packet that is encrypted will be in the same relative position; therefore reducing the probability of violating the encoder's syntax." (Office Action of June 7, 2004; page 4).

Applicant respectfully requests that the Examiner clarify her statement regarding "the encoder's" syntax. In particular, *what* encoder's syntax would be violated were Colligan *not* to be modified as suggested by the Examiner? Applicant notes that Colligan fails to disclose or describe an encoder. Moreover, applicant respectfully requests that the Examiner describe *how* Colligan's embodiment of Fig. 14E would increase the probability of violating an encoder's syntax.

Applicant respectfully asserts that the Examiner's rejection over Colligan fails to establish a *prima facie* case of obviousness. Applicants respectfully direct the Examiner's attention to MPEP 2143.01 wherein states that a *prima facie* case of obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention **where there is some teaching, suggestion, or motivation to do so** found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art (emphasis added) (citing In re Kotzab, 217 F.3d 1365 (Fed. Cir. 2000)).

Applicants assert that one of ordinary skill in the art having read and understood the disclosure of Colligan would recognize that Colligan's "invention relates to secure video distribution networks" (Colligan; col. 1, lines 23-24) wherein a *previously encoded* video program is selectively encrypted (see, for example, Colligan; col 5, line 59). Thus, applicant asserts that Colligan would provide no motivation, as suggested by the Examiner, for one of ordinary skill in the art to modify Colligan to restart the counter of Fig. 14E when a new header code is detected precisely because an encoder's syntax would not otherwise be violated in the system disclosed by Colligan. In support of this assertion, applicant respectfully directs the Examiner's attention to Fig. 14F and the accompanying text of Colligan wherein an embodiment utilizing *random* encryption selection is disclosed (Colligan; col. 13, lines 6-29) – if violation of an encoder's syntax were a concern with respect to the system(s) disclosed by Colligan then the embodiment of Fig. 14F would be inoperable.

Thus, applicant asserts that the Examiner has failed to articulate how or where Colligan, either explicitly or implicitly, provides motivation to one of ordinary skill in the art to modify Colligan to produce the claimed invention. Moreover, applicant asserts that the Examiner has provided no basis for concluding that any teaching, suggestion and/or motivation for the modification as suggested by the Examiner may be found in the knowledge generally available to one of ordinary skill in the art.

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Reply to Office Action of June 7, 2004
Attorney Docket: 42390.P10217

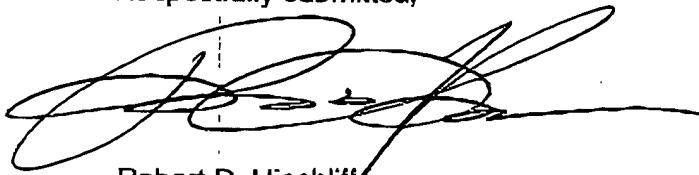
CONCLUSION

In view of the foregoing, it is respectfully asserted that all of the claims pending in this patent application are in condition for allowance.

The required fee for a two month extension of time is enclosed. No additional fees are required for additional claims. Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #02-2666.

If the Examiner has any questions, she is invited to contact the undersigned at (503) 264-6473. Reconsideration of this patent application and early allowance of all the claims is respectfully requested.

Respectfully submitted,



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